

With regard to the LECs that impose a “no-PIC” charge on any independent PSP, the Commission should determine that the LEC must impute this “no-PIC charge” to all of its payphones to maintain the competitive parity required by Section 276.<sup>16</sup> As discussed above at greater length, because of the technical differences inherent in the presubscription processes for LEC payphones and independent payphones, independent payphones may require protection against possible liability for fraudulent calls.. To this end, many independent PSPs do not presubscribe their payphones to any carrier to prevent any fraud.

PSPs have taken steps to prevent fraud that are completely transparent to callers. Callers are still able to make 1+ long distance coin calls (through call routing with “smart” payphones), 0+ calls with calling cards, and collect calls. With no additional public interest benefit whatsoever, the imposition of a “no-PIC” charge merely discriminates against the independent PSP to the benefit of LECs (which collect the charge) and LEC PSPs (which do not have to pay the charges their independent PSP competitors must pay).<sup>17</sup> Therefore, if a LEC imposes a “no-PIC” charge on any independent payphone, the LEC must impute

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<sup>16</sup> If the LEC is already imposing the PICC on the presubscribed 1+ carrier for the LEC’s payphones, the issue of imputing the PICC would be mooted. However, if the PICC is imposed on the 0+ carrier presubscribed to the LEC payphones, the discrimination issue would remain and it would still be necessary to impute the PICC to the LEC payphone operations.

<sup>17</sup> In recent years, some LECs have begun to deploy “smart” payphones that do not have the fraud protection capabilities associated with “dumb” payphones. Under this scenario, where the LEC-owned “smart” payphone and the independent “smart” payphone have the same capabilities, it would be even more egregious for the LEC parent to not impose a “no-PIC” charge on its payphone affiliate, if the LEC parent was imposing the charge on independent PSPs.

the same charge, with no differential, to the LEC's own payphones. The better alternative, as pointed out above by APCC, is to determine that LECs may not impose a "no-PIC" on independent payphones, which would preclude entirely the need for a LEC to impute this charge to the LEC payphone operations.

**4. Should All Public Payphones Be Charged The Multiline Business PICC, Or Should Some Public Payphones, Such As Those That Constitute The Only Telephone Line At A Given Location, Be Charged The Single-Line Business PICC?**

The Commission should clarify that, if the PICC applies to payphones at all, it is the single-line business PICC that should apply to each payphone. As discussed in response to Question 1, payphones most resemble businesses with single-line phones. Not only are PSPs billed separately for each payphone (often with independent billing cycles), each payphone has its own separate physical plant and dedicated line. Each payphone has a separate line number, which transmits an individual ANI. In many cases, the payphone is the only telephone line at a given location. Unlike the typical multiline situation, payphones generally are not concentrated, have no DID, and have no shared use. Instead, whether they are placed individually or in groups, each payphone is best thought of as a self-contained, stand-alone business center, each of which must remain economically viable in order to survive. Therefore, in all cases, each individual payphone should pay the single-line business PICC. In addition, if a LEC is permitted to impose a "no-PIC" charge in a competitively-neutral manner, it must do so at the single-line rate as well.

**5. Do Policy Reasons, Practical Considerations, Or Other Factors Suggest That Price Cap LECs Should Be Permitted To Assess PICCs On The LEC's Public Payphone Lines That Are Different In Amount, Or Collected From A Different Party, From Those Assessed On Privately-Owned Payphones?**

As discussed above, with Section 276's non-discrimination<sup>18</sup> mandate, LEC-owned payphones and independently-owned payphones are to be treated the same by the Commission, *i.e.*, there are to be no regulatory distinctions between LEC PSPs and independent PSPs, nor between their respective payphones. In addition, LECs may not discriminate in favor of their PSP operations. Competitive parity between all PSPs is the hallmark of the Commission's deregulatory framework for payphones. Under this framework, a LEC must impute to its payphone operations any charge that it would impose on an independent PSP, including the PICC with its corresponding single line or multiline designation. If a LEC does not impose a PICC on telephone lines used by the LEC's payphone operations, then the LEC may not impose a PICC on the telephone lines used by independent PSPs. Similarly, if the LEC imposes the PICC on all payphones, it must apply the same rate to each payphone, specifically the single-line business rate.

As discussed above in response to Questions #1 and #3, LECs should be required to treat equally LEC-owned payphones and independent payphones with regard to the imposition of a "no-PIC" charge. Because of technical differences in how LEC-owned payphones and independently-owned payphones are presubscribed, independent PSPs,

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<sup>18</sup> 47 U.S.C. § 276(a).

unlike LEC PSPs, must guard against possible liability for fraudulent calls made at independent payphones. As a result, many independent PSPs do not presubscribe their payphones to IXCs, *i.e.*, the independent PSPs' "no-PIC," as a means of preventing and avoiding liability for toll fraud.

The technical differences between LEC PSPs and independent PSPs in the area of presubscription must not be allowed to have a competitive effect under the Commission's post-1996 Act deregulatory framework for payphones. Independent PSPs should not be further penalized by being charged a "no-PIC" charge, particularly when the LECs do not impute such a charge to LEC payphone operations. Therefore, the Commission should require that LECs *not* impose a "no-PIC" charge on any payphone that is not presubscribed to an IXC. In the alternative, if LECs are permitted to impose a "no-PIC" charge on any independent payphone, then the LECs should be required to impose such a charge on all LEC payphones to prevent a discriminatory impact on independent PSPs.

**6. To What Degree Could Imposition Of PICC Charges On Any Of The Parties Listed In Question (3), Above, Cause Reductions In The Availability Of Public Payphone Services, Increases In Rates, Or Reduction In Competition For Interstate, InterLATA Traffic Originating From Public Payphones?**

In Section 276, Congress stated that its goal was "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public[.]"<sup>19</sup> The Commission must ensure that this

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<sup>19</sup> 47 U.S.C. § 276(b)(1).

overarching purpose continues to be at the core of any action taken by the Commission with regard to payphones and PSPs.

The foremost factor in determining whether an individual payphone can “make it” in the new competitive payphone marketplace will be the business decisions the PSP makes and the traffic its payphone locations generate. Independent PSPs welcome this challenge. For years, the PSPs have been forced to compete for every call and are thus quite skilled in determining where and how to best serve callers.

Some of the uncertainty that PSPs are now facing, however, is from the imposition of regulatory charges, which at times seem to come from every direction, including the PICC, USF charges, and the EUCL charge. Most of these charges, the PICC in particular, are simply being applied to PSPs without regard to whether they fit the characteristics of the PSPs’ business, or whether the PSPs have already paid the charge – either directly or indirectly.<sup>20</sup> As such, the imposition of charges like the *multiline* PICC and the discriminatory and anti-competitive “no-PIC” charge present a threat to the widespread availability of payphones for the general public.

In the instant proceeding, the Commission has an opportunity to fine-tune its rules on access charge reform to keep them from conflicting with the Congressional purpose in

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<sup>20</sup> As one example, PSPs are now required to pay twice into the USF, which helps to ensure that all Americans have access to telephone service. While independent PSPs have no argument with the goals of this fund, PSPs should not be required to pay more than their fair share of the costs of universal service. But PSPs are currently required to pay their share twice over, through (1) direct payments to the USF; and (2) rates for end users that already include a mark-up to cover the end user’s share of USF costs.

mandating a new deregulatory framework for payphones with competitive parity between LEC PSPs and independent PSPs. The Commission can correct a situation where most independent PSPs are being overcharged on the PICC, and where some independent PSPs are being hit with a discriminatory and anticompetitive “no-PIC” charge that is at odds with the public interest efforts of these independent PSPs to prevent fraud. To this end, the Commission should clarify that the single-line PICC should apply to all payphones, and that payphones not presubscribed to an IXC should not be required to pay a “no-PIC” charge.<sup>21</sup> These actions would be a significant step in ensuring that there is no reduction in the availability of payphones to the general public.

Respectfully submitted,



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<sup>21</sup> Just as the Commission should clarify that only the single-line PICC is to be imposed on PSPs, in the event that the FCC finds any “no-PIC” charge on PSPs appropriate, the Commission should likewise clarify that it is the single-line “no-PIC” charge that applies.

## CERTIFICATE OF SERVICE

I hereby certify that on May 26, 1998, a copy of the foregoing Comments of the American Public Communications Council was delivered by hand or United States first-class mail, postage pre-paid to the following parties:

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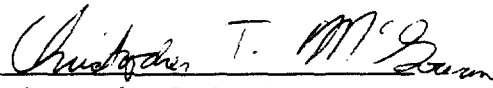
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